Vallors Form DC4-63 AR476

TRIAL COURT OF THE COMMONWEALTH DISTRICT COURT DEPARTMENT NEW BEDFORD DIVISION

BRISTOL	

Jo-Ann Soares.

Plaintiff

vs.

Bsta sí um aviso oficial do Tribunal. Se voçs não sabe let ingita, ebtenha uma traducito,

Trustmark Insurance Company,

Defendant

4-12035-NMG

Civil Action No. 0433 CV 1011

SUMMONS (Rule 4)

Trustmark Insurance Company 400 Field Drive, Lake Forest, IL 6004 (address)
y, Esquire, plaintiff('s (name) Thomas P. You are hereby summoned and required to serve upon _ 388 County St., New Bedford, MA 02740 attomey), whose address is. , a copy of your answer to the complaint which is hetewith served upon you, within 20 days after service of this summons, exclusive of the day of service. You are also required to file your answer to the complaint in the office of the Clerk of this court either before service upon plaintiff('s attorney), or within 5 days thereafter. If you fail to meet the above requirements, judgment by default may be rendered against you for the relief demanded in the complaint. You need not appear personally in court to answer the complaint. Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will be barred from making such claim in any other action.

WITNESS	BERNADETTE L	SABRA	 Presiding Justice, on	August 23,	2004
			_	(defte)	

(SEAL)

Note: (1) When more than one defendant is involved, the names of all defendants should appear in the action. If a separate summons is used for each defendant, each should be addressed to the particular defendant.

The number assigned to the complaint by the Clerk at commencement of the action should be affixed to this summons (2) before it is served.

RETURN OF SERVICE

August 23, 2004 I served a copy of the within summons, together with a copy of the On (date of service) complaint in this action, upon the within named defendant, in the following manner (see Rule 4 (d) (1-5)):

> (signature) Lawrence D. Hunt, Esquire (name and title)

Perry, Hicks, Crotty & Deshaies, (address)

388 County Street, New Bedford, MA 027

(1) The person serving the process shall make proof of service thereof in writing to the court and to the perty or his attorney. Note: as the case may be, who has requested such service. Proof of service shall be easde promptly and in any event within the same time during which the person served must respond to the process. Rule 4(1).

Picase place date you make service on defendant in the box on the copy served on the defendant, on the original re-(2) ed to the court and on the copy returned to the person requesting service or his attorney.

of usual place of abode, the officer shall forthwith mail first class a copy of the summons abode, and chall set forth in the return the date of mailing and the address to which the മ suck last and usual place of shode, a minous was soni (G.L. a. 221, sec. 11).

Brin es una notificación oficial de la corte. El usted no sube lest inglés, obtenga traducción.

COMMONWEALTH OF MASSACHUSETTS

H CLERKS OFFICE

2004 SEP 21 P 3: 42

BRISTOL, ss.

DISTRICT COURT DEPARTMENT

DOCKET NO. USERICT COURT

SISTRICT OF MASS.

JO-ANN SOARES,

Plaintiff

*

V\$.

COMPLAINT

TRUSTMARK INSURANCE

COMPANY,

Defendant

Jo-Ann Soares brings this action against Trustmark Insurance Company to enforce payment of proceeds of a life insurance contract on the life of Manuel Soares. Mrs. Soares is the sole beneficiary of a contract for insurance on the life of Manuel Soares. Mrs. Soares completed the life insurance application in good faith and submitted it to Trustmark. Trustmark has repeatedly denied payment of the claim on the ground that statements in the application for insurance were false, despite its lack of evidence that the statements were willfully false, fraudulent or misleading. See, Torres v. Fidelity & Guaranty Life Insurance Co., 34 Mass. App. Ct. 376 (1993).

PARTIES

- 1. Plaintiff, Jo-Ann Soares ("Mrs. Soares") is an individual who resides at 29 Sowle Street, New Bedford, Massachusetts.
- 2. Defendant, Trustmark Insurance Company ("Trustmark") is a corporation with a usual place of business at 400 Field Drive, Lake Forest, Illinois.

FACTS

- 3. On October 29, 2002, Mrs. Soares submitted an application to Trustmark for a life insurance policy on the life of Manuel Soares. A copy of that application is attached hereto as Exhibit A.
- 4. Among the information requested by the application was whether Mr. Soares had been treated in the six months prior to the application for an illness or disease (question 9 on application). Mrs. Soares answered the question in the negative, based upon information given to her by Mr. Soares. Unbeknownst to Mrs. Soares, Mr. Soares had seen physicians for treatment within the six months prior, in July and August of 2002.
- 5. Mrs. Soares completed this application in good faith based on Mrs. Soares' best memory and information available to her.
- 6. Trustmark issued policy number WT9714 in response to this application (the "Policy"). Mrs. Soares began paying premiums on the policy and continued to do so during the life of Mr. Soares. The face amount of that policy is \$20,000. A copy of that policy is attached hereto as Exhibit B.
- 7. Trustmark issued the policy on the life of Manuel Soares without requiring a medical examination of Mr. Soares.
- 8. The policy provides for adjustments to the death benefit amount due to misstatements of age and allows for rescission as to misstatements of cigarette use. The policy contains no provision on its face with regard to other misstatements, (page 13 of policy).
- 9. Mrs. Soares is the sole beneficiary under the policy.
- 10. Mr. Soares died on February 14, 2003.

- Mrs. Soares submitted a claim for benefits on the policy on June 24, 2003. 11.
- Trustmark denied the claim on February 4, 2004, and sent Mrs. Soares a check in 12. the amount of \$250.99 for reimbursement for premiums paid on the policy. A copy of that denial is attached hereto as Exhibit C.
- Trustmark's initial reasoning for denial of the claim, as stated in their February 4, 13. 2004 denial was that Mrs. Soares made a material misrepresentation in her application when she stated that Mr. Soares had not seen a doctor within the prior six months.
- "Material misrepresentation" is not a valid ground for denial of death benefits. 14. Under Massachusetts law, where an insurance company chooses to issue a policy without a medical examination of the insured, the company may deny a claim only where the company proves that the statements in the application are "willfully false, fraudulent, or misleading." Mass. Gen. Laws, Ch. 175 §124; Torres v. Fidelity & Guaranty Life, 34 Mass. App. Ct. 376 (1993).
- Mrs. Soares again made demand for payment of the claim on May 12, 2004. A 15. copy of that demand is attached hereto as Exhibit D.
- On May 27, 2004, Trustmark recognized their affirmative obligation to prove that 16. the statement was "willfully false, fraudulent or misleading," but again denied the claim. The second denial was made on the claimed belief that the misrepresentation was willfully false, fraudulent or misleading, with no offer of proof and without any investigation. A copy of that correspondence is attached as Exhibit E.

Breach of Contract

- 17. Plaintiff, Jo-Ann Soares, repeats the allegations set forth in paragraphs 1 through 16 as though the same were fully set forth herein.
- 18. Mrs. Soares tendered performance under the contract for life insurance by paying premiums on the policy.
- 19. Trustmark breached the contract by refusing to pay the claim.

Wherefore, Plaintiff, Jo-Ann Soares, prays that this Court:

- a. Ender judgment in the amount of \$20,000, plus interest, against the defendant, Trustmark Insurance Company, together with costs and attorneys fees.
- b. Grant Plaintiff such other and further relief as this Court deems just and proper.

COUNT II

M.G.L. chapter 93A

- 20. Plaintiff, Jo-Ann Soares, repeats the allegations set forth in paragraphs 1 through 19 as though the same were fully set forth herein.
- 21. On June 2, 2004, Mrs. Soares sent a demand letter in accordance with M.G.L. chapter 93A to Trustmark. A copy of that demand is attached hereto as Exhibit F. In its response, Trustmark failed to make a reasonable offer of settlement. A copy of that response is attached hereto as Exhibit G.

- Trustmark has engaged in unfair claims settlement practices under M.G.L. ch. 22. 176D §3(9), undertaken willfully and knowingly, by "refusing to pay claims without conducting a reasonable investigation based upon all available information;" by "failing to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;" and by "compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds." Mass. Gen. L. Ch. 176D, §3(9).
- These unfair claims settlement practices are violations of the Massachusetts 23. Consumer Protection Law, M.G.L. ch.93A.

Wherefore, Plaintiff, Jo-Ann Soares, prays that this Court:

- Enter judgment in the amount of \$20,000 against the Defendant a. Trustmark, and in additional to actual damages, award the Plaintiff \$40,000, plus interest, plus costs of suit herein including attorneys' fees.
- Grant Plaintiff such other and further relief as this Court deems just and b. proper.

Plaintiff, Jo-Ann Soares,

Thomas P. Crotty, Esquire BBO#106800

Lawrence D. Hunt, Esquire BBO#643821

Perry, Hicks, Crotty & Deshaies, LLP

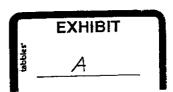
388 County Street

New Bedford, MA 02740

508-996-8291

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	Signature of Agent CL-801 MA	Agent I.	.D. Number	Signature(s)	of Owner, if other	er than Propi	osed insured WP

WT9714P1



Dear Certificateholder/Policyholder:

We are pleased to announce a number of enhancements to your Trustmark Premier Protector Universal Life coverage as of March 6, 2002.

You may notice these enhancements in one of three ways.

- 1. You may notice a higher death benefit in your issued coverage than what was reviewed at time of application.
- 2. You may notice higher account and cash values in your issued coverage than what was reviewed at the time of application.
- 3. You may have already seen these enhancements in the values that were reviewed at the time of application.

In all cases, these enhancements increased the value of your coverage and were included at no additional cost. Your deduction remains the same.

These enhancements are also in effect for all previously issued Premier Protector coverage, which will have higher account and cash values as a result.

If you have any questions for our Client Service Department, just call 1-800-918-8877. Our staff is available to answer questions or perform any other related services you may need.

Thank you for your confidence in us. We look forward to serving you for many years to come.

Sincerely,

Client Services

Trustmark

INSURANCE COMPANY

400 Field Drive *Lake Forest, IL 60045 Phone: (800) 918-8877 *Fax: (847) 615-3826

JOANN SOARES 29 SOWLE ST NEW BEDFORD MA 02745

Certificate Number: WT9714

Proposed insured: MANUEL P SOARES JR

Employer: CITY OF NEW BEDFORD

Dear Insured:

Congratulations and thank you for participating in the Massachusetts Municipal Insurance Program underwritten by Trustmark Insurance Company. The Trustmark Protector made available to you through your employer will mean added security for you and your family.

Enclosed please find your Trustmark Protector Plan documents. Please review and store them in a safe place for future reference. We have also enclosed two copies of your Life insurance Illustration Numeric Summary. Please sign and return one copy in the enclosed postage paid envelope.

It is very important that you contact the office of the Massachusetts Municipal Insurance Program if you should change your name, address, or employer. Remember, your coverage is portable, it may be continued if you residence or employment status change.

Thank you again. If you should have any questions, please do not hesitate to call your servicing agent, the Massachusetts Municipal Insurance Program at (800) 445-4493, or our office at (800) 918-8877, option 8.

Sincerely, Trustmark Insurance Company Massachusetts Municipal Administration Team

Enclosures

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TRUSTMARK INSURANCE COMPANY 400 Field Drive Lake Forest, Illinois 60045

CERTIFICATE OF INSURANCE

This is Your Certificate of Insurance ("Certificate") while the Group Policy ("Policy") is in force. It explains the rights and benefits that are determined by the Policy. The Policy is a contract between the Policyholder and Us. The Policy is issued to the Starmark Mil Trust as Policyholder.

We will pay the Death Benefit Proceeds to the Beneficiary if the Insured dies prior to the Maturity Date and while this Certificate is in force. Payment will be made after We receive due proof of the Insured's death. We will pay the Cash Value of this Certificate to the Owner on the Certificate Maturity Date if the Insured is living on that date. Payment is subject to the terms of the Policy and this Certificate.

NOTICE OF THIRTY DAY RIGHT TO EXAMINE

You may return this Certificate within thirty days after delivery if You are not satisfied with it for any reason. The Certificate may be returned to Us or to the agent through whom it was purchased. Upon surrender of the Certificate within the thirty day period, it will be void from the beginning, and We will refund any premium paid.

The provisions on the pages which follow are a part of this Certificate. This Certificate contains a summary of the terms of the Group Policy which is a legal contract between the Policyholder and Us. This Certificate is evidence of life insurance under the Group Policy and is subject to all of the terms and limits of the Group Policy and any amendments thereto.

Read Your Certificate Carefully.

TRUSTMARK INSURANCE COMPANY

J. Grover Thomas Jr. President & Chief Executive Officer

Frank G. Gramm Corporate Secretary & General Counsel

Flexible Premium Adjustable Life Insurance to Age 100. Adjustable Death Benefit Proceeds payable upon the Insured's death prior to the Maturity Date. Flexible premiums are payable during the lifetime of the Insured prior to age 100, and while the Certificate is in force. Accumulated Values and Cash Values are flexible and will be based on the amount and frequency of premiums paid, the Monthly Deduction, and the amount of interest credited. Participating.

VULXXCV40000

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7. Children's Term Insurance Rider. (CT). S5,000 Under age 19 and proposed for coverage. Children's Term Proposed Insured #1 or Proposed Insured #1a. Us						
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16. a. As of the	e date of this a	onlication, de	es the Insured a	and/or prop	osed insure	ed have in	n force o	or an ap	plication	pend	ior griii	anoth	er
specified b. Are all p	d disease policy persons to b <u>e</u>	y?∐Yes L insured cuπ	J No ently covered u								-	-	
coverage	e? 🗆 Yes 🖸	No	incured began	1) recomm	ended by a	mem-					Depen		
not yet been	edical profession performed or adic mammoora	on to have d for which re arc nan sme	liagnostic tests r Isults have not y Pars, and/or PS/	retated to d yet been re A tests); or	ancer which eceived (exc (2) diagnos	n nave Huding sed as	Emole Yes	<u>No</u>	Spous Yes N		Chlic Yes	<u>No</u>	
having, or be cinoma); Ho	een treated tor: odgkin's Diseas	: Cancerunc	luding skin Cand mia, Lymphoma	cer (exclud	IIIU Dasai Ci	en can-				<u>.</u>			늘
Brain Tumor 18. Has any prop	nosed insured t	oeen treated	for, or diagnosed leficiency Syndro	d by a men	hber of the m) or tested p	nedical ositive					_	_	-
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sure with re	eadings at or a	above 150M	M.HG Systolic	Blood Pre	ssure and/o	or 100	l 👝			- I		σ.	- '= -
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SECTION D. C	ONDITIONAL	AUNI E IN LUINIE	NIS TO AFFLI	ICATION_							Yes	No	
I hereby authori Benefit) coverag I hereby authori	ge on any of th	ie proposed	insureds who a	ate dacime	a tor the Ci	rtical lline	ess cov	erage.					
insureds are dec	clined for the o	icliar amour	it applied for.				-				=		1 电阻
the remaining pi	roposed insure	ecs accepta	ble to Trustmark	κ.			-						
amount stated of the NOTE: None of the	on this applicat	tion to cover	the benefit acti	uaily issue	d to the pe	rsons act	tually in	surea.			∐ oposed	ت I insurt	<u></u>
Remarks or S						-					-		-
answers shall Acknowledgh Medical Inform Trustmark Ins ask to be inte Authorization it, to its reinsu	be made part nent - 1 have nation Bureau; surance Comperviewed for the to Release In the March 1997 the March 1	of any insur- received an and 3) the financy is auth his report. Information - ledical information -	ers given in this ance issued. diread a copy Notice of Informiorized to obtain authorize the nation Bureau a coords about moner; hospital; of	of the Conation Praction ar. Investigation ar. Investigation of the control of th	mpany's No lices. stigative C ted herein to records in	otices ab onsume: o give Tru the entiti	r report	Fair C t on me insura session	redit Re e. Lunde nce Con about r	portin erstar npany ne or	Act; and that and the my me	2) the til mathematical transfer of the tild the	e y h
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INSURED: MANUEL P SOARES JR CERTIFICATE NUMBER: WT9714

AGE: 66 CERTIFICATE DATE: JANUARY 01, 2003

RATE CLASS: PREFERRED MATURITY DATE: JANUARY 01, 2037

REGULAR MONTHLY PREMIUM: \$62.76

INITIAL FACE AMOUNT: \$ 20,000 REGULAR MONTHLY PREMIUW: \$62.76

DEATH BENEFIT OPTION: A MONTHLY GUARANTEE PREMIUM: \$62.76

FACE AMOUNT INCREASE:

MONTHLY GUARANTEE PREMIUM
EXPIRY DATE: JANUARY 01, 2008

PERCENTAGE RATING FACTOR: 1.1000

OWNER AND BENEFICIARY AS DESIGNATED IN THE APPLICATION UNLESS SUBSEQUENTLY CHANGED AS HEREIN PROVIDED

BASIC CERTIFICATE DATA

FORM NO.	BENEFIT	INITIAL PLANNED ANNUAL PREMIUM	EXPIRY <u>DATE</u>
GUL-899	Flexible Premium Adjustable Life Ins.	\$753.12	JANUARY 01, 2037
·	Riders		
	Total initial Planned Premium Annual Monthly Initial Surrender Charge	\$753.12 \$62.76 \$ 1,057.00	

IMPORTANT FINANCIAL INFORMATION

GUARANTEED MINIMUM INTEREST RATE:

4.0% COMPOUNDED YEARLY

MONTHLY ADMINISTRATIVE FEE:

\$5.50

PARTIAL WITHDRAWAL CHARGE:

\$25.00 FOR EACH PARTIAL WITHDRAWAL

LOAN INTEREST RATE:

8% COMPOUNDED YEARLY

PERCENTAGE EXPENSE CHARGE:

CERTIFICATE YEARS 1 THROUGH 10:

10.0% OF PREMIUM PAID UP TO THE REGULAR

ANNUAL PREMIUM

CERTIFICATE YEARS 11 AND AFTER:

06.0% OF PREMIUM PAID UP TO THE REGULAR

ANNUAL PREMIUM.

SURRENDER CHARGE: SHOWN AS A PERCENT OF THE INITIAL SURRENDER CHARGE

CERTIFICATE	PERCENT
YEAR	
1	96%
2	95%
3	94%
4	90%
5 6 7	85%
6	80%
	75%
9	70%
9	60%
10	50%
11	40%
12	30%
13	20%
14	10%
15	0%
16	0%
17	0%
18	0%
19	0%
20	0%

VULXXSB40000

AMENDMENT

Page 17 of 17

INSURED: MANUEL P. SOARES JR POLICY/CERTIFICATE NO: WT9714

This Policy/Certificate has been amended as follows:

The ADB RIDER is hereby removed due to age limits.

This amendment will be effective as of October 29, 2002. Except as stated herein, this amendment will not change any of the terms or provisions of the Policy/Certificate.

TRUSTMARK INSURANCE COMPANY (MUTUAL)

P682

WT9714M1